



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 13, 1995

Bill Herzog, CPA  
Hays County Auditor  
Courthouse Annex  
102 North LBJ Drive  
San Marcos, Texas 78666

OR95-595

Dear Mr. Herzog:

You have asked this office whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32556.

Hays County (the "county") received a request for a proposal submitted to the county in response to the county's request for proposal to construct and manage a juvenile services facility. You contend that the information at issue is excepted from disclosure under sections 552.104 and 552.110 of the Government Code.

Section 552.104 excepts "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in a commercial context by keeping some competitors or bidders from gaining unfair advantage over other competitors or bidders. Open Records Decision No. 541 (1990) at 4. However, generally neither the contract nor information submitted with the bid is excepted under section 552.104 once the bidding process is over and a contract awarded. *Id.* at 5. Since the contract has already been awarded, the proposal at issue may not be withheld under section 552.104.

Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. Open Records Decision No. 592 (1991) at 2. Pursuant to section 552.305(b) of the Government Code, this office notified the company that submitted the proposal, Texson Management Group, Inc. ("Texson"),

of the request for information and solicited argument in support of your assertion that the requested information is excepted from public disclosure. Notice was sent to Texson at the address provided by the county. This office received no response from Texson.

You submitted to this office for review Texson's proposal to the county. You assert that the information is protected under section 552.110 because Texson "has stated that all of this information is proprietary." We assume that you are asserting the information at issue concerns trade secrets. Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information (1) trade secrets, and (2) commercial or financial information that is made confidential by statute or judicial decision. In *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958), the Texas Supreme Court adopted the Restatement of Torts definition of a trade secret. The following criteria determines if information constitutes a trade secret:

(1) the extent to which the information is known outside [the owner's business]; (2) the extent to which it is known by employees and others involved in [the owner's] business; (3) the extent of measures taken [by the owner] to guard the secrecy of the information; (4) the value of the information to [the owner] and to [its] competitors; (5) the amount of effort or money expended by [the owner] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 522 (1989).

This office will accept a claim that information is excepted from disclosure as a trade secret if a prima facie case is made that it is a trade secret, and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 592 (1991). However, the county has not made such a prima facie case, and Texson has provided no information that would lead this office to believe the information at issue is a trade secret. *See* Open Records Decision No. 402 (1983). Therefore, this information may not be excepted as a trade secret under section 552.110.

Because the information at issue is not excepted from disclosure under either section 552.104 or 552.110, it must be released. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records.

If you have questions about this ruling, please contact our office

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy".

Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/KHG/rho

Ref.: ID# 32556

Enclosures: Submitted documents

cc: Ms. Guadalupe Carbajal  
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125 North Guadalupe  
San Marcos, Texas 78666  
(w/o enclosures)

Mr. John L. Bonner  
Texson Management Group, Inc.  
405 West 18th Street  
Austin, Texas 78701  
(w/o enclosures)